



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/481,207    01/11/00    PHILLIPS    J    40015630-003

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HM12/0831

EXAMINER

FAN...I

ART UNIT

PAPER NUMBER

1625

DATE MAILED:

08/31/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/481,207

Applicant(s)

PHILLIPS, JEFFREY OWEN

Examiner

Jane T. Fan

Art Unit

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 23-621 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-621 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10, 16.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 23-33, 95-111, 141-151, 300-311, 335-370, 461-491, 496-531 are rejected under 35 U.S.C. 102(b) as being anticipated by JP05194224 ( applicants' mistakenly submitted pat' 224 rather than '225 ) or 05194225 by Oishi et al. It is noted that the claimed language as presented reads on the references since "comprising" is an open-ended term.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 23-180, 300-398, 461-559 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP05194224 or 05194225 by Oishi et al. optionally in view of pat' 5,447,918 by McCullough or pat' 5,792,473 by Gergely et al.

The two primary references teach anti-ulcer composition containing benzimidazoles with buffer. The secondary references teach that adding antifoaming agent or/and flavoring agent in a pharmaceutical composition are conventional rendering the claims unpatentable.

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4. Claims 181-299, 399-460, 560-621 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP05194224 or 05194225 by Oishi et al. optionally in view of pat' 5,447,918 by McCullough or pat' 5,792,473 by Gergely et al. in combination with JP0525508<sup>8</sup> or JP 05294831.

The two primary references teach anti-ulcer composition containing benzimidazoles with buffer. The secondary references teach that adding antifoaming agent or/and flavoring agent and/or coated with one or more layers formed on the core part in a pharmaceutical composition are conventional rendering the claims unpatentable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane T. Fan whose telephone number is 703-308-4705. The examiner can normally be reached on 7:00am-3:30pm, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Venkat can be reached on 703-308-2439. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4734 for regular communications and 703-308-4734 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Jane T. Fan  
Primary Examiner  
Art Unit 1625

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August 29, 2001



JANE FAN  
PRIMARY EXAMINER  
GROUP 1200